

# DEPARTMENT OF THE TREASURY

**Walker R. Stapleton**  
State Treasurer



**Brett J. Johnson**  
Deputy Treasurer

## **REQUEST FOR QUALIFICATIONS TO PROVIDE TITLE REVIEW AND REAL ESTATE LEGAL SERVICES FOR FISCAL YEARS 2011-2012 FOR STATE OF COLORADO BUILDING EXCELLENT SCHOOLS TODAY LEASE PURCHASE AGREEMENTS**

### **I. INTRODUCTION**

- A. The State Treasurer seeks title review and collateral due diligence services, for certain real property and improvements located at various school districts, Charter Schools, Boards of Cooperative Educational Services (BOCES), and the Colorado School for the Deaf and Blind (CSDB) throughout the State of Colorado. In general, the properties will be pledged as collateral in connection with the tax exempt financing under the project but some projects may have separate collateral. The Treasurer will use the proceeds obtained in the transaction(s) to fund capital projects at these same school districts, Charter Schools, BOCES, and the CSDB.
- B. **The BEST Act.** Legislation enacted by the Colorado General Assembly established the Building Excellent Schools Today Act, House Bill 08-1335 and Senate Bill 09-257 codified in part in Article 43.7 of Title 22, Colorado Revised Statutes. This legislation authorizes the Treasurer to execute lease purchase agreements on behalf of the State for certain capital projects at public kindergarten through twelfth grade school districts, Charter Schools, BOCES, and the CSDB. The repayment source for these transactions is the Public School Capital Construction Assistance Fund. The legislation provides for ongoing lease purchase agreements in future years, up to a total annual aggregate BEST lease payment cap.

The State Treasurer has issued three series of BEST financing transactions.

<u>Date</u>	<u>Amount</u>	<u>School Projects Financed</u>
August 7, 2009	\$87,145,000	3
March 16, 2010	\$99,685,000	10
December 16, 2010	\$217,530,000	10

*Current financing schedule contemplates closing at the end of December 2011 with between 10 – 20 projects financed.*

- C. **Collateral.** The collateral consists of local school property and may be located in rural and remote areas of the State. In many cases, the property has never been pledged as collateral, resulting in the discovery of old and unusual title and survey issues such as reverter clauses, legal description defects, and handwritten and illegible deeds. In some instances,

substitute collateral from the school district is used. The Treasurer seeks proposals from law firms to provide title and survey review and real estate due diligence for the implementation of the BEST lease purchase program.

- D. **The 2011 Projects.** The BEST Board will meet in June 2011 to approve the list of projects for the next round of financing. The list of BEST projects and school properties has not been finalized and is subject to change. Some projects depend upon the School passing a ballot measure to issue Matching Money Bonds in a voter election to be held in November 2011. Until the election results of the Matching Money Bond election, the State will conduct survey, title and environmental site assessment on all projects approved by the BEST Board. The State will pay title search, survey and ESA expenses for all projects approved by the BEST Board in June 2011, however, a title policy is issued and a title premium paid only for those projects that satisfy their Matching Money requirements by a November 2011 deadline and move forward to the closing table. The list of properties may also be expanded to include additional BEST projects and the resulting contract amended accordingly. For prior projects, changes to the legal description of the collateral may be necessary, resulting in an endorsement to an existing policy and recording of an amendment to the financing documents.
- E. **Land Acquisitions.** Some schools will acquire vacant land from private landowners for the site of their project. Each school and seller is represented by independent legal counsel. For the BEST closing, real estate legal services may be requested to review the contract to purchase real estate, General Warranty Deed, and access easements. Project site acquisitions occur at closing with the title company serving as escrow agent to receive COP proceeds and pay to the Seller upon satisfaction of all closing conditions.
- F. **School District Documents.** Each participating school district will provide a School Board resolution authorizing the transaction and provide a legal opinion that it holds title to the property and is authorized to enter into the BEST transaction. Most schools have changed their legal name, merged or consolidated with other school districts in the last 75 years. Prior legal names of a school district may appear in the chain of title. The School Board resolution and legal opinion will include a representation on all prior names of the school and the current legal name of the school. No additional documentation is available.

**All proposals must be received at the State Treasurer's office by:  
July 22, 2011 at 12:00 p.m. MDT**

## **II. SERVICES NEEDED**

- A. The Treasurer is inviting law firms located in the State of Colorado to submit responses to this RFQ to provide real estate legal services related to the BEST lease purchase agreements.
- B. The Treasurer may select more than one company to provide these services.

## **III. MINIMUM QUALIFICATIONS TO BID**

- A. Proposing company(s) must have an office located in the State of Colorado. The company must clearly present its Colorado business address on the cover page of its proposal.
- B. Each attorney providing legal services must be actively licensed to practice law in the State of Colorado.
- C. If selected, the proposing firm must agree to sign the State Contract for Real Estate Legal Services which will include the Special Provisions included at the end of this document.

#### IV. SCOPE OF SERVICES

- A. Focus of real estate due diligence is twofold: (1) basic level of review necessary to identify and resolve material title issues in order to pledge the property as collateral; and (2) note any material title and survey issue that may impact construction to be addressed by the school after financing.
- B. Develop form of model title commitment to reflect the BEST financing documents. Coordinate review of vesting deeds, survey, legal description and preliminary title commitment with the Title Company and the State.
- C. Review ALTA Survey and note any material defects in the legal description that affects clean title.
- D. Review preliminary title commitment and communicate any material issues to the State. Negotiate out or endorse over certain title exceptions. Communicate to the State via email or memo any material title issues for decision and resolution. The school will receive a copy of the communication for review with their legal counsel.
- E. For property to be acquired from third parties at closing, review contract to purchase real estate, general warranty deed, settlement statement, title and survey work, access agreements, subdivision issues. Advise the State, buyer and seller's counsel of material issues.
- F. Upon request of the State, attend meetings of finance team
- G. Upon request of the State, advise of materiality of environmental issues identified in ESA.
- H. Provide on-going legal support and advice for amendments to the collateral description and title endorsements for existing projects.

#### V. PROPOSAL FORMAT

##### A. Overview

- 1. Briefly describe the firm's practice as it relates to real estate legal services.
- 2. Provide a contact for this RFQ and his or her phone number, fax number, and email address. Place this information on the cover page.
- 3. Provide a summary of your company's experience with similar projects, including survey and title work for school districts, and survey and title work on pooled collateral projects.
- 4. Describe how you will identify those survey and title defects that affect financing versus minor defects that may affect construction. Indicate your approach to title and survey review for property being pledged and then leased back to its current owner.
- 5. Provide information on the time required for your firm to review and comment on each project survey and preliminary title commitment. Describe how you will prioritize the BEST project with other client matters, plans for back up staffing and ability to

##### B. Staffing

- 1. Describe the professional and real estate law experience of the primary attorney and paraprofessionals who will provide the services requested and include their office locations, phone and fax numbers and email address.
- 2. Identify the individual attorney who will have the primary responsibility for the work. If selected the attorney with primary responsibility for the project will be expected to make the project a top priority in order to meet closing deadlines. The attorneys providing the services must be members in good standing of the Colorado Bar and are duly authorized to practice law in the State.

- C. Fees: Present the fees and expenses the firm would charge for the real estate legal work related to the implementation of the 2011 BEST projects. You may report your fees as a per school financed amount, an hourly rate with a maximum, or as a flat amount for the entire 2011 BEST financing.

**C. Timelines and Schedules.** Tentative schedule for title and survey services

6/30/11	BESTS Board approves list of 2011 Projects
7/11/11	Title company to send vesting deeds to BEST staff to forward to surveyors. Confirmation of property addresses.
7/15/11	BEST Division hires surveyor(s)
8/11/11	Surveys complete
8/18/11 – 9/11/11	Title company to delivery preliminary title commitments to the State
9/11/11 – 10/11/11	State and schools review preliminary title commitments. Corrections made within 48 hours of notice.
10/31/11	All survey and title work complete. Final title commitments sent to schools.
11/8/11	General election for Matching Money Bonds
12/15/11	Closing
1/15/12	Final policies issued and delivered to State.

1. Acknowledge the above schedule and confirm the ability of the primary attorney and paraprofessional to satisfy the identified deadlines. Legal services for title review will occur during the months of September and October. Address the following and add additional information if necessary:
  - a) Length of time to review a title commitment, exception documents and ALTA survey.
  - b) Time frame to negotiate and resolve title defects.
  - c) Commitment to make the BEST 2011 real estate due diligence a priority during August, September and October 2011. Plan to address personnel and staffing issues if personnel depart or are absent.

**D. Requirements.**

1. The company shall acknowledge in its proposal:
  - a) That all fees and expenses are paid solely from the proceeds of the financing and there are no alternative sources of reimbursement.
  - b) That the proposed fees are fixed and are not subject to change after acceptance by the State.
  - c) That the proposed fees are reasonable for the services rendered.
  - d) These acknowledgments are required before a proposal will be accepted by Treasury for review.
  - e) The firm shall acknowledge that upon award, the firm will sign the State Contract for Title Services attached. Any changes or objections to the State Contract MUST be detailed in the firm's proposal.

## VI. ENGAGEMENT:

- A. The engagement will be for a term of one year with an option to extend for four (4) additional one year extensions. The engagement may be canceled by the Treasurer for any reason upon thirty calendar days written notice.
- B. Company must be able to commence the above scope of work immediately upon award of contract.

## VII. EVALUATION PROCESS

- A. The proposals will be reviewed by a group of evaluators. The group will evaluate all proposals and then rank each proposal in its category.
- B. The de-identified rankings will be presented to the Treasurer for his selection.
- C. Conformance with the minimum qualifications specified in this RFQ is a prerequisite for evaluation.
- D. Each proposal will be evaluated based upon the following factors, ranked in the order of importance.
  - 1. Turnaround time. Time is of the essence on this project. The ability of the company to quickly review a title commitment and survey and resolve title defects.
  - 2. Experience of staff that will be assigned to work on this project. Ability to commit staff to this project, depth of backup personnel, commitment to make this project a priority.
  - 3. Plan to meet deadlines despite staffing issues or other client work.
  - 4. Fees.
  - 5. Ability to work with legal counsel in a collaborative manner to accomplish the real estate due diligence as quickly as possible and to coordinate the real estate documents into COP closing documents.
  - 6. Experience of company on similar projects.

## VIII. ADMINISTRATIVE INFORMATION

- A. The evaluation process may include informal interviews of highly ranked company(s).
- B. If a company is selected, it shall take no position contrary to the State, nor represent any client whose interests are in conflict with the State on this COP issue. It must disclose any relationship or compensation arrangement that could create or appear to create a conflict of interest with any entity involved in the proposed COP issue.
- C. By submitting a proposal, the company certifies that it fully understands the services requested including the associated terms and conditions. Treasury assumes no liability for expenses incurred by a company prior to its selection, nor any subsequent expenses or fees of selected company(s) if the COPs are not sold.
- D. Materials submitted to the Treasury become property of the State and after award become a public document. Firms must identify any proprietary or confidential information in their proposal.
- E. Any actual or prospective proposer who is aggrieved in connection with the solicitation or award of a contract may protest to the Deputy Treasurer at Treasury by submitting a written protest within seven days after the award. Protests will be reviewed by the State Treasurer within 30 days of receipt and a decision rendered within 60 days.

- F. The successful Firm must provide the required insurance certificate when the State Contract is executed.
- G. The Treasury reserves the right to cancel this RFQ at any time or to reject any or all proposals.
- H. The response to this RFQ should not exceed 12 pages excluding appendices, with every page numbered except the cover and partition pages, with font no smaller than 11 point and standard margins.
- I. Interested company(s) should submit **4 COPIES** of their proposal to: Brett J. Johnson, Colorado Deputy State Treasurer, State Capitol, 200 E. Colfax, rm. 140, Denver, Colorado, 80203. One additional copy should be sent by email to [brett.j.johnson@state.co.us](mailto:brett.j.johnson@state.co.us), Fax copies will not be accepted.
- J. Proposals are due at **12:00 P.M. Tuesday, July 22, 2011.**
- K. Any contract resulting from this RFQ shall be in the form of the State Contract for Title Services, attached hereto, without material modification except as noted in the firm's proposal.
- L. There is no penalty whatsoever on a company that chooses not to submit a proposal.
- M. Questions about this RFQ, the COPs, or the Treasury may be directed to:

*Brett J. Johnson, Deputy Treasurer*

*Department of Treasury*

*200 E. Colfax Avenue*

*140 State Capitol*

*Denver, CO 80203*

*Phone 303-866-2442*

*Mobile 303-717-2319*

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